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to be better served by demanding fair dealing in settlement of partnership affairs than by rigidly insisting that the court cannot aid one whose rights are based upon an illegal contract. The exact point at which the taint of illegality becomes ineffective probably cannot be fixed. We can but await with interest cases which will give more clearly the other intermediate lines on which California will decide this question of public policy.

R. R. L.

CONFLICT OF LAWS: CONSTITUTIONAL LAW: SITUS OF A CHOSE IN ACTION UNDER THE INHERITANCE TAX ACT: WHAT TRANSFERS MAY CONSTITUTIONALLY BE TAXED—In *Chambers v. Mumford*[1] a non-resident testator left to the defendant, also a non-resident, an undivided one-sixth interest in a promissory note payable to a third party which note was held in this state. Both the maker and the payee of the note were residents, and the note was secured by a mortgage on California real estate. The court held that the testator's interest was not "property within the state"[2] subject to the California inheritance tax, because the situs of a chose in action follows the domicile of the owner. It saw no reason to distinguish between inheritance and property taxes in interpreting the phrase "property within the state." In cases involving property taxes the court has held that a chose in action is situated with the creditor, and therefore that a debt due from a resident to a non-resident is not taxable.[3]

Under the California Inheritance Tax Act the rule determining the taxation of movables seems to be as follows. The state may tax:

(1) All movables belonging to resident decedents regardless of location;[4]

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[1] (Oct. 14, 1921) 62 Cal. Dec. 450, 201 Pac. 588.

[2] Cal. Stats. 1913, p. 1066, which says that a succession tax may be levied "when the transfer is by will or intestate laws of property within the state and the decedent was a non-resident at the time of his death."

[3] San Francisco v. Mackay (1896) 113 Cal. 392, 45 Pac. 696 (bonds); Mackay v. San Francisco (1900) 128 Cal. 678, 61 Pac. 382. See also San Francisco v. Flood (1884) 64 Cal. 504, 2 Pac. 264, holding that where the owner of stock in a foreign corporation resided in California, the stock was taxable as property in this state, though the certificates were held elsewhere.

[4] Estate of Hodges (1915) 170 Cal. 492, 150 Pac. 344. On this question see Thomas Reed Powell, Extra-Territorial Inheritance Taxation, 20 Columbia Law Review 1; Joseph H. Beale, Jurisdiction to Tax, 32 Harvard Law Review 587, 624. Inheritance taxes, for the reason that they are privilege and not property taxes, are not within the rule of Union Refrigerator Transit Co. v. Kentucky (1905) 199 U. S. 194, 50 L. Ed. 115, 26 Sup. Ct. Rep. 36. The Supreme Court there held an attempted taxation of tangible personalty situated outside the taxing state was beyond the state's constitutional power. The court said: "It is unnecessary to say that this case does not involve the question . . . of inheritance or succession taxes . . . which are controlled by different considerations" (p. 211).

(2) All tangible movables belonging to non-resident decedents which are situated in this state at the time of death;[5]

(3) All shares of stock in domestic corporations, wherever the certificates may be, even though owned by non-resident decedents;[6]

(4) Bonds and notes belonging to non-resident decedents which have obtained a "business situs" in this state.[7] In other cases the state does not tax the inheritance of choses in action owned by non-resident decedents, even though the evidences thereof are in the state at the time of death.[8]

Inheritance tax cases present two questions: whether the statute applies to the property sought to be taxed, and, if so, whether the statute is constitutional. In the principal case the statute was held inapplicable; therefore no constitutional question was presented. If the court, however, had so construed the phrase "property within the state" as to include the testator's interest in the promissory note, this interesting question might have arisen.

It seems fairly clear that if the court had held that the transfer in the principal case was taxable, the statute would not thereby have been rendered unconstitutional.[9] Inheritance taxes are levied, not upon persons, property, or business, but upon the right to inherit.[10] Therefore it is held that a state may constitutionally

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[5] McDougald v. Lilienthal (1917) 174 Cal. 698, 164 Pac. 387, L. R. A. 1918F 267.

[6] McDougald v. Lilienthal (1917) supra, n. 5; McDougald v. Low (1912) 164 Cal. 107, 110, 127 Pac. 1027; Murphy v. Crouse (1901) 135 Cal. 14, 66 Pac. 971. The rule probably applies to stock in a national bank situated in California. See 32 Harvard Law Review 625. "A reason for making a distinction between certificates of stock and ordinary choses in action is in the fact that the former represent an interest in and derive their value from the tangible assets of the corporation." McDougald v. Lilienthal, supra.

[7] Estate of McCahill (1915) 171 Cal. 482, 153 Pac. 930; Estate of Fair (1900) 128 Cal. 607, 61 Pac. 184. "Where the paper evidences of debts are in the possession and control of an agent of the owner in a state foreign to the domicile of the latter, and are held by the agent for management in the course of the permanent business of the owner, they obtain a business situs." Estate of Fair, supra.

[8] Chambers v. Mumford, supra, n. 1; Estate of McCahill, supra, n. 7. See Prentiss-Hall Inheritance Tax Service, 1921-22, 208, California.

[9] In Blackstone v. Miller (1902) 171 N. Y. 682, affirming 74 N. Y. Supp. 508, under an inheritance tax applying to "property within the state" it was held that a bank deposit owned by a non-resident and having no business situs in New York, was taxable. The court held that a bank deposit, for all practical purposes, is identical with money in specie. The Supreme Court affirmed this decision (1903) 188 U. S. 189, 47 L. Ed. 439, 23 Sup. Ct. Rep. 277, on the ground that a state may constitutionally tax any inheritance, where the transfer is subject to the power of the state. The rule, so far as New York is concerned, seems to have been changed by statute, and it would now appear that the liability of non-residents for inheritance taxes with respect to intangibles is governed by the maxim *mobilia sequuntur personam*. 3 New York Laws (1911) ch. 732, sec. 1; 2 Prentiss-Hall Inheritance Tax Service, 209, New York.

[10] Magoun v. Illinois (1898) 170 U. S. 283, 42 L. Ed. 1037, 18 Sup. Ct. Rep. 594, holding inheritance tax providing different rates for different

collect inheritance taxes with respect to any property which the transferee must invoke the state's law to secure.[11] Thus, the state of the decedent's domicile may lawfully compute its inheritance tax upon all his personal estate, wherever situated,[12] because the law of the domicile governs the devolution of personalty.[13] Therefore, tangible personalty may be included in two inheritance taxes; first, in that of the state where the decedent was domiciled;[14] second, in that of the state where the property actually is situated;[15] since the legatee or next of kin must look to the laws of the latter state to obtain possession. Intangible personalty, it appears, may fall within the purview of any number of state inheritance taxes. First, as heretofore stated, the inheritance thereof is constitutionally taxable by the state of the decedent's domicile.[16] Second, as some cases hold, such inheritance may be taxed by the state where the evidences of debt exist at the time of the decedent's death, for example, bonds and notes.[17] Third, such inheritance has been held properly taxable by the state where the

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classes of transferees constitutional; Plummer v. Coler (1900) 178 U. S. 115, 44 L. Ed. 998, 20 Sup. Ct. Rep. 829, where it was held that a state could constitutionally tax United States bonds, even though the same were issued under a statute declaring them exempt from state taxation in any form. United States v. Perkins (1896) 163 U. S. 625, 41 L. Ed. 287, 16 Sup. Ct. Rep. 1073, holding a state may tax a legacy to the United States; Murdock v. Ward (1900) 178 U. S. 139, 44 L. Ed. 1009, 20 Sup. Ct. Rep. 775, allowing a Federal inheritance tax upon United States bonds exempt from all Federal taxation. Professor Thomas Reed Powell, 20 Columbia Law Review 1, questions the soundness of this distinction. He seems to think that inheritance taxes are, for jurisdictional purposes, a form of personal or property taxes. Any person who endeavors to discuss inheritance taxes without describing them as taxes upon persons or property will appreciate the cogency of Professor Powell's contention. See also Thomas Reed Powell, Indirect Encroachment on Federal Authority, 31 Harvard Law Review 321, 335.

[11] Blackstone v. Miller, supra, n. 9.

[12] Orr v. Gilman (1902) 183 U. S. 278, 46 L. Ed. 196, 22 Sup. Ct. Rep. 213. Here an inheritance tax law was passed after the testator's death, but before distribution. It was held that the tax was applicable, and to the entire personal estate wherever situated; Bullen v. Wisconsin (1916) 240 U. S. 625, 60 L. Ed. 830, 36 Sup. Ct. Rep. 473.

[13] Thomas Reed Powell, 20 Columbia Law Review 1.

[14] Supra, n. 12.

[15] Western Assurance Co. v. Halliday (1903) 127 Fed. 830; Chambers v. Mumford, supra, n. 1. See also Joseph H. Beale, Jurisdiction to Tax, 32 Harvard Law Review 587, 627.

[16] Supra, n. 12.

[17] Wheeler v. Sohmer (1913) 233 U. S. 434, 58 L. Ed. 1030, 34 Sup. Ct. Rep. 607. In that case a testator left in a safe deposit vault in New York four promissory notes, executed by an Illinois corporation, and secured by a mortgage on Illinois land. The testator was a non-resident of New York. The notes were nevertheless held subject to the New York inheritance tax. It is interesting to note that Justice Holmes went beyond the facts to state that the result would have been the same even if a property tax had been under consideration. Hoyt v. Keegan (1918) 183 Ia. 592, 167 N. W. 521; In re Rogers (1907) 149 Mich. 305, 112 N. W. 931.

debtor resides.[18] Multiple taxation of inheritances, it seems, is not invalid under the Federal Constitution.[19]

M. M. P.

CONFLICT OF LAWS: MATRIMONIAL PROPERTY: EFFECT ON MOVABLES OF CHANGE OF DOMICILE FROM A COMMON-LAW STATE TO A COMMUNITY PROPERTY STATE—It is a general principle of conflict of laws that the mutual rights of husband and wife in personal property are governed by the law of the matrimonial domicile at the time the property is acquired.[1] These rights are not affected by any subsequent change of domicile and removal of the property to another state where a different law obtains,[2] but acquisitions made after the change are governed by the law of the new domicile.[3] Thus personal property acquired by a husband and wife domiciled in a jurisdiction whose laws make it the separate property of the husband maintains its separate character when removed into a state in which the community law prevails,[4] notwithstanding that the statutes of the latter state provide generally that property acquired after marriage by either spouse, other than that acquired by gift, devise or descent, shall be community property.[5] And if the husband with the funds so accumulated in a foreign state purchases lands therewith in his new domicile it will remain his separate property.[6]

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[18] This was the theory of the Supreme Court in Blackstone v. Miller, supra, n. 9, although as there noted the New York court in holding the bank deposit subject to the inheritance tax, did so on the ground that a bank deposit is in practice equivalent to money in specie. See also Charles E. Carpenter, Jurisdiction over Debts, 31 Harvard Law Review, 905, 923.

[19] It must not be amiss, however, to suggest with Professor Powell (20 Columbia Law Review 1) that "a tax which is not found unconstitutional may yet be adjudged unwise." The decision in the principal case, it is submitted, is entirely sound. With all deference it is suggested that many decisions vie with the publican in tax-gathering zeal. An extreme manifestation of this tendency is Matter of McMullan (1921) 144 Misc. 505, 187 N. Y. Supp. 248. In that case the Supreme Court of New York upheld a statute taxing the inheritance of shares in a foreign corporation, owned by a non-resident. Jurisdiction rested on the ground that the corporation owned real property in New York, and the tax was assessed in the ratio borne by this property to the total assets of the corporation. A comment on this case appears in 35 Harvard Law Review 93.

[1] Kraemer v. Kraemer (1877) 52 Cal. 302; Estate of Nicolls (1912) 164 Cal. 368, 129 Pac. 278; see generally, 57 L. R. A. 353; 29 L. R. A. (N. S.) 781.

[2] Estate of Burrows (1902) 136 Cal. 113, 68 Pac. 488; Estate of Boselly (1918) 178 Cal. 715, 175 Pac. 4.

[3] Dow v. Gould Co. (1867) 31 Cal. 629; Saul v. His Creditors (1827) 5 Martin (N. S.) (La.) 569, 16 Am. Dec. 212; Conner v. Elliott (1855) 59 U. S. (18 How.) 591, 15 L. Ed. 497; 21 Cyc. 1634, and cases there cited.

[4] Kraemer v. Kraemer, supra, n. 1; Ballinger on Community Property § 47; 5 R. C. L. 830.

[5] Brookman v. Durkee (1907) 46 Wash. 578, 90 Pac. 914, 12 L. R. A. (N. S.) 921.

[6] Shumway v. Leakey (1885) 67 Cal. 458, 8 Pac. 12; Estate of Warner (1914) 167 Cal. 686, 140 Pac. 583; Estate of Arms (1921) 62 Cal. Dec. 146, 199 Pac. 1053; Ballinger on Community Property § 47.